HUSSIN MOHD ALI

v.

HO KAY TAT & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[SUIT NO: S6-22-38-2001]
31 DECEMBER 2003

TORT: *Defamation - Newspaper article - Whether defamatory of plaintiff - Defence of fair comment - Whether proved - Whether words complained of were comments - Whether of public importance - Whether based on facts - Whether honestly made*

The plaintiff was, at the material time, the general manager of the Sepang International Circuit Sdn Bhd (SIC). The SIC was a venue for Malaysia's motorsports. It conducted the Formula One Race, a world-class event, in 1999 and was awarded for being the best organizers for that event. However, the subsequent two events that it conducted did not appear to be as successful as the said Formula One Race and it was extensively criticised by the newspapers. The plaintiff brought this action against the defendants claiming that they had defamed him by the publication of two articles in the daily newspaper called "THE SUN". The 2nd defendant was the owner and the publisher of the said daily newspaper whilst the 1st defendant was the editor in chief. It was the plaintiff's claim that the natural meaning of the said articles were that the plaintiff was responsible for three problems that existed in the SIC and that he was incompetent to hold the office as the general manager of the SIC. The defendants argued that the plaintiff as the general manager was said to be accountable for the problems in the SIC and not that he was personally blamed for them. Further, there was no suggestion or inference that the plaintiff was incompetent. Being held accountable would not be the same as being incompetent. Also, the three problems reported in the relevant article did occur and the replacement of the plaintiff as general manager did take place. Therefore, the defendants were justified to make the comments referred to. Apart from this, the defendants pleaded the defence of fair comment on matters of public importance.

Held:

[1] There are four elements that the defence is required to prove in order to avail itself of the defence of fair comment: (i) that the words complained of are comments, although it may consist or include inference of facts; (ii) that the comment is a matter of public importance; (iii) that the comment is based on facts; and (iv) that the comment is one which a fair-minded person can honestly make on the facts proved. (p 413 a-d)

[2] The gist of the plaintiff's complaint was not about the words actually used but the natural and ordinary meaning of the said articles read as a whole. It is settled law that not only opinion but also inference or deduction of facts can amount to a comment. The implications that the plaintiff complained of were clearly comments in the sense of being inferences of opinion or conclusion drawn from those facts. They contained the defendant's belief or conclusion based on or drawn from the established facts. Accordingly the 1st element required to prove the defence of fair comment was satisfied. (p 413 d-f)

[3] There was no doubt that the SIC and the position of the plaintiff was a matter of public importance. Events that were held in the SIC attract public interest not only locally but also internationally. Even the Prime Minister then had shown great interest in the SIC and had attended some of the events held there. Therefore, the second element required to prove the defence of fair comment was satisfied. (p 413 f-g)

[4] The plaintiff did not dispute the material allegation of facts in the said articles. As such, there was no difficulty in concluding that the comments made by the defendants were based on actual facts. It followed that the third element, required to prove the defence of fair comment was satisfied. (p 414 a)

[5] The plaintiff did not deny the existence of the three problems that existed in the SIC. The plaintiff as general manager should be responsible for whatever that happened in the SIC. Accordingly, it would not be unreasonable to make the comments the defendants did, namely, that the plaintiff was accountable for the said problems. As such, the comments made by the defendants were honest based on the facts established. There were no elements of malice whatsoever. If there were any inaccuracy in the facts published, it was due to the unwillingness on the part of the plaintiff and the staff of SIC to give the relevant information sought by the defendants. It followed that the fourth element required to prove the

defence of fair comment was satisfied. Therefore, the defendants had succeeded in establishing a defence of fair comment on a matter of public importance. (pp 414 g-i & 415 a)

[Plaintiff's claim dismissed with costs.]

Case(s) referred to:
Jeyaretnam v. Goh Chok Thong [1989] 1 WLR 1109 ***(refd)***
Silkin v. Beaverbrook [1958] 2 All ER 516 ***(refd)***

For the plaintiff - Chan Tse Yuen (Ronnie Wong Chun Yiam & Haniza Abdul Rani); M/s Chan Tse Yuen & Co
For the defendants - N Nadkarni (Azman Thaiyub Khan); M/s Lee Hishammuddin

Reported by Usha Thiagarajah

JUDGMENT

Azmel Maamor J:
The plaintiff's claim against the two defendants were for damages including aggravated and/or exemplary damages, as well as for injunction and costs for libel contained in two articles published by the defendants in the daily newspaper, "The Sun". The said articles appeared in the sports column of The Sun in its 27 April 2000 and 28 April 2000 issues. For purpose of convenience the full text of the said articles are herewith reproduced.

The 1st article published on 27 April 2000 states:

SHAKE-UP AT SEPANG INTERNATIONAL CIRCUIT?

After 16 months in operation, things are definitely not looking good for Sepang International Circuit (SIC), home of Malaysia's motorsports.

First of all, there was – and still is – the problem of the results of the Proton International Merdeka 300 km which was held last August.

And then there was the pitiful attendance at the Malaysian Motorcycle Grand Prix early this month, which was witnessed by Prime Minister Datuk Seri Dr. Mahathir Mohamad.

And lastly, there was the 10,000 Swiss francs (RM24,000) fine slapped by the International Motorcycling Federation (FIM) for disregarding racing instructions in course of staging the Malaysian Motorcycle GP from March 31-April 2.

And all of these things happening in less than a year.

One wonders how a RM320 million world class circuit which won the prize for 'The Best Organisers for 1999's Formula One Race' has been reduced to this state.

The latest development, according to motorsports insiders, things are set to change in the SIC with owners Malaysian Airports Berhad chairman Tan Sri Basir Ismail expected to wield the dreaded axe.

The first change is rumoured to be an infusion of new blood into the management, with the current general manager Hussin Mohd Ali likely to be replaced by marketing and sponsorship manager Anis Zuhani Ahmad.

Apparently, Basir is calling for a meeting with SIC staff tomorrow when he will inform them of the latest development.

And the 2nd article published on 28 April 2000 states:

***Status quo* as SIC quash talk of change**

1. PETALING JAYA, Thurs: Contrary to speculation within the motorsports fraternity, Sepang International Circuit national press officer Azhar Ghazali denies that there will be any changes in their management when contacted today.

2. Word has it that SIC marketing and sponsorship manager Anis Zahani Ahmad will replace general manager Hussin Mohd Ali but when pressed on whether there will be any changes in the near future, Azhar replied: "You can't ask me that."

3. Attempts to contact Anis, Hussin and SIC owners Malaysia Airports Berhad chairman Tan Sri Basir Ismail were met with royal brush offs. According to insiders the changes may not be all that drastic as it is believed that Hussin may not be axed but made events director.

At the material times the plaintiff was the general manager of Sepang International Circuit Sdn. Bhd. (SIC). The 2nd defendant is the owner and publisher of The Sun and the 1st defendant at the material times was the Editor-in-Chief. It was the plaintiff's claim that the defendants had defamed him by the publication of the said two articles.

The brief facts of this case are as follows.

The construction of the Sepang International Circuit, the venue for Malaysia's motorsports, was completed in 1998. It was a mammoth project with a construction cost of about RM320 million. Its main purpose was to be one of the venues for the Formula One Race which is considered to be a world class event. In 1999 SIC had conducted such event for the first time. Because SIC had superbly managed and organised the said event it was awarded the prize for being "The Best Organisers for 1999's Formula One Race".

SIC is owned by the Malaysian Airport Berhad (MAB). The plaintiff, an employee of MAB, was seconded as the general manager of SIC w.e.f. 1 January 1999 to 6 August 2000. As the general manager, the plaintiff was responsible for the day-to-day operation of the circuit. He was also answerable to the Board of Directors of SIC for all actions and decisions involving SIC.

Because Formula One Racing event only takes place once a year at the SIC, the Board of Directors decided that at other times the circuit could be used to hold other racing events. Such other events that were conducted at SIC were the Proton International Merdeka 300 km held in August 1999, and Malaysian Motorcycle Grand Prix held in early April 2000. However the outcome of these two events did not appear to be as successful as the event of the Formula One Race. Instead of getting praises, SIC had been extensively criticised especially by the newspapers. The Sun published the impugned articles in its sports column on 27 April 2000 and secondly on the following day, 28 April 2000.

In its first article, the defendants had said that SIC were no longer looking good. It gave three reasons for saying so:

> First of all, there was – and still is – the problem of the results of the Proton International Merdeka 300 km which was held last August. And then there was the pitiful attendance at the Malaysian Motorcycle Grand Prix early this month, which was witnessed by Prime Minister Datuk Seri Dr. Mahathir Mohamed.
>
> And lastly, there was the 10,000 Swiss Francs (RM24,000) fine slapped by the International Motorcycling Federation (FIM) for disregarding racing instructions in course of staging the Malaysian Motorcycle GP from March 31 - April 2. And all these things happening in less than a year.

The said article went on to state:

> The latest development, according to motorsports insides, things are set to change in the SIC with owners Malaysian Airports Berhad chairman Tan Sri Basir Ismail expected to wield the dreaded axe. The first change is rumoured to be an infusion of new blood into the management, with the current general manager Hussin Mohd. Ali likely to be replaced by marketing and sponsorship manager Anis Zuhaini Ahmad.
>
> Apparently, Basir is calling for a meeting with SIC staff tomorrow when he will inform them of the latest development.

The gist of the content of the 2nd article published on the following day states:

> Word has it that SIC marketing and sponsorship manager Anis Zuhaini Ahmad will replace general manager Hussin Mohd. Ali but when pressed on whether there will be any change in the near future, Azhar replied: "You can't ask me that."
>
> Attempts to contact Anis, Hussin and SIC owners Malaysian Airports Berhad chairman Tan Sri Basir Ismail were met with royal brush offs. According to insiders, the changes may not be all that drastic as it is believed that Hussin may not be axed but made events director.

It was contended by the plaintiff that with the publication of the said articles in The Sun on 27 April 2000 and 28 April 2000 the defendants had falsely and maliciously written, printed and published words which were defamatory against the plaintiff. It was the plaintiff's complaint that the natural meaning of the articles are:

1. that the 3 problems at the SIC as mentioned in the 1st article were the Plaintiff's responsibilities; and

2. that the Plaintiff was incompetent to hold the office as the general manager of the SIC.

In other words, the plaintiff contended that there was a natural implication from paras. 7 and 8 of the 1st article that the plaintiff as the general manager of the SIC was responsible for the three problems described in the 1st article.

However the defendants did not agree with the plaintiff's contention and denied that that was the natural meaning of the articles. It was strongly argued by the defendants that on a proper reading of the first 6 paragraphs of the 1st article the blame was not at all on the plaintiff but squarely on the SIC. Hence the import of the subsequent paras. 7 and 8 was that the plaintiff as the general manager was to be accountable for the problems, and not that he personally be blamed for them. Further, there was no suggestion or inference from the articles that the plaintiff was incompetent. Being held accountable would not be the same as being incompetent.

The defendants further contended that the three problems as reported in the 1st article did occur. And the replacement of the plaintiff as the general manager of the SIC did also take place. He was replaced by the chairman, Tan Sri Basir Ismail. Therefore the defendants were justified to make such comments. That the replacement of the plaintiff took place a few months after the articles were published did not make them any less true.

Apart from the above, the defendants also pleaded defence of fair comments on matters of public importance.

The law as regards the defence of fair comments on a matter of public importance has been succinctly set out in the Singapore Privy Council case of *Jeyaretnam v. Goh Chok Tong* [1989] 1 WLR 1109. At p. 1112 of the decision the Privy Council laid down the four elements which the defence is required to prove in order to avail itself of such defence as follows:

(i) The words complained of are comments, although it may consist or include inference of facts;

(ii) the comment is a matter of public importance;

(iii) the comment is based on facts; and

(iv) the comment is one which a fair-minded person can honestly make on the facts proved.

With regard to the 1st element, it is clearly stated in the pleadings, that the gist of the plaintiff's complaint was not about the words actually used, but what the plaintiff claims is the natural and ordinary meaning of the articles read as a whole. It is settled law that not only opinion but also inference or deduction of facts can amount to a comment. (See *Jeyaretnam v. Goh Chok Tong (supra)*).

In this case, following the statement of facts in paras. 2 to 4 of the 1st article, the implications that the plaintiff complained of are clearly comments in the sense of being inferences of opinion or conclusion drawn from those facts. They contained the defendant's belief or conclusion based on or drawn from the established facts.

As to the 2nd element, I had no doubt whatsoever that SIC and the position of the plaintiff in it, was a matter of public importance. Suffice it to say that events that are held in SIC attract public interest not only locally but also internationally. Even the Prime Minister had shown great interest in SIC and had attended some of the events held there.

The 3rd element deals with the question whether the comments were based on facts. This requirement had been clearly explained in the case of *Jeyaretnam v. Goh Chok Tong (supra)* where Lord Ackner said:

> It is of course well established that a writer may not suggest or invent facts and then comment upon them, on the assumption that they were true. If the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail. The commentator must get his basic facts right.

In the instant case it was not disputed by the plaintiff that the material allegation of facts in the said articles were true. As such I had no difficulty in concluding that the comments made by the defendants were based on actual facts.

The 4th and final element deals with the question whether the comment is one which a fair-minded person could honestly make on the facts proved.

The issue here is whether the comment was honestly made. The question whether it was reasonably made does not arise. For as long as the defendants acted honestly and without malice, it does not matter if the comments were wrong or even exaggerated. The question that needs to be asked is whether there was honesty. And this principle is clearly stated in the case of *Silkin v. Beaverbrook* [1958] 2 All ER 516, as follows:

> Freedom of speech, like the other fundamental freedoms, is freedom under the law, and over the years the law has maintained a balance between the rights of the individual, like the Plaintiff, whether he is in public life or not, to his unsullied reputation if he deserves it. That is on the one hand. On the other hand, but equally important, is the right of the public, which means you and me, and the newspaper editor and the man who, but for the bus strike, would be on the Clapham omnibus, to express his views honestly and fearlessly on matters of public interest, even though that involves strong criticism of the conduct of public people ...
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> So in considering this case, members of the jury, do not apply the test of whether you agree with it. If juries did that, freedom of speech, the right of the crank to say what he likes, would go. Would a fair-minded man holding strong views, obstinate views, prejudicial views, have been capable of making this comment? If the answer to that is yes, then your verdict in this case should be a verdict for the defendants. Such a verdict does not mean that you agree with the comment. All it means is that you think that a man might honestly hold those views on those facts.

Applying the above principle to the instant case I was fully satisfied that having regard to the fact that there were no denials to the truth of the existence of the three problems of SIC as published by the defendants in the 1st article coupled with the fact that the plaintiff as the general manager of SIC, was the chief executive officer in SIC and therefore responsible for whatever happening taken place in SIC, it would not be at all unreasonable to make the comments that the plaintiff should be held accountable for the said problems. The comments made by the defendants were honest based on the facts established. And there were no elements of malice whatsoever. If any inaccuracy in the facts were published that was done mainly due to the unwillingness on the part of the plaintiff and the staff of SIC to give the relevant information sought by the defendant.

In the light of the above I arrived at the conclusion that the defendant had succeeded in establishing a defence of fair comment on a matter of public importance. The defendants had clearly shown the existence of all the four elements of such defence.

In passing I would like to add the following remarks. It has become almost a common norm that anything that is newly implemented will have to undergo a period of teething problems before achieving full perfection, if at all. The operation of the SIC is no exception. The events in SIC which attract international participants and spectators would certainly require to be perfectly administered. Needless to say that having good and efficient administration is one of the main factors that would ensure good attendance of events that are carried out in SIC. Good attendance would mean good income to SIC. And at the same time it enhances Malaysia's good name worldwide as a very capable organizer of sporting events.

With such objective the management of SIC should always welcome whatever comments and constructive criticism concerning events that are carried out in SIC so that whatever shortcomings and defects could be rectified and further improved. It is also important that such defects should not be swept under the carpet. Hence the role of the newspaper and the press become very important to publicise whatever defects and shortcomings that occurred during such events in order to give public awareness and at the same time to urge SIC to rectify such defects and shortcomings. That was more or less what appeared to have happened in this case.

After having carefully considered the facts and circumstances of this case I arrived at the conclusion that the comments made by the defendants were fair comments on matter of public importance. I therefore dismissed the plaintiff's claim with costs.